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# HOPKINS & SUTTER

(A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS)

888 SIXTEENTH STREET, N. W., WASHINGTON, D C 20006-4103 (202) 835-8000
FAX (202) 835.8136
INTERNET http://www hopsut com

CHICAGO OFFICE THREE FIRST NATIONAL PLAZA 60602-4209
DETROIT OFFICE 2800 LIVERNOIS SUITE 220 TROY, MI 48083-1220



THOMAS R DEVINE
(202) 835-8096
Direct Fax (202) 835-8238
E-Mail: TDevine@hopsut com

November 24, 1998

BY HAND

U.S. Department of Transportation Dockets
Docket No. FAA- 1998-4458
400 Seventh Street, SW
Rm. Plaza 401
Washington, DC 20590

Re: **Docket No. FAA-1998-4458 -19**

Dear Sir or Madam:

Enclosed for filing in duplicate are the Independent Pilots Association's Comments on the FAA's Notice of Proposed Rulemaking, Prohibition on the Transportation of Devices Designed as Chemical Oxygen Generators as Cargo in Aircraft, Docket No. FAA-1998-4458. An additional copy is enclosed for date-stamp and return with our messenger. Thank you for your assistance.

Sincerely,

Thomas R. Devine

Thomas R. Devine

P17234-1

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**BEFORE THE**
**DEPARTMENT OF TRANSPORTATION**
**FEDERAL AVIATION ADMINISTRATION**

| | |
|---|---|
| Notice of Proposed Rulemaking | **Docket No. FAA-1998-4458-19** |
| Prohibition on the Transportation of Devices Designed as Chemical Oxygen Generators as Cargo in Aircraft | |

# COMMENTS OF THE INDEPENDENT PILOTS ASSOCIATION

Communications with respect to this document should be sent to:

Robert Miller
President
Independent Pilots Association
200 High Rise Drive, Suite 199
Louisville, KY 40213
Phone: (502) 968-0341
Fax: (502) 968-0470

Thomas R. Devine
Jamie P. Rennert
Hopkins & Sutter
888 16th Street, N.W.
Washington, D.C. 20006
Phone: (202) 835-8000
Fax: (202) 835-8136

Counsel for
Independent Pilots Association

Dated: November 24, 1998

**BEFORE THE**
**DEPARTMENT OF TRANSPORTATION**
**FEDERAL AVIATION ADMINISTRATION**

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| Notice of Proposed Rulemaking<br><br>Prohibition on the Transportation of Devices Designed as Chemical Oxygen Generators as Cargo in Aircraft | **Docket No. FAA-1998-4458** |

**COMMENTS OF**
**THE INDEPENDENT PILOTS ASSOCIATION**

## Introduction

The Independent Pilots Association ("IPA") represents over 2000 airline pilots employed by United Parcel Service. IPA has a fundamental interest in aviation safety, including the regulation of air transportation of chemical oxygen generators. Our member pilots operate all-cargo flights that would be affected by the FAA's current proposal. IPA supports the FAA's proposed ban of chemical oxygen generators from carriage on passenger flights. However, IPA believes that the proposal to allow certain generators to be transported on all-cargo flights falls far short of the FAA's goal of "enhanced aviation safety." *Prohibition on the Transportation of Devices Designed as Chemical Oxygen Generators as Cargo in Aircraft,* FAA Docket *No.* 29318, *Notice No.* 98-13 *("Prohibition"),* 63 Fed. Reg. 45912 (Aug. 27, 1998) (proposed amendment to 14 C.F.R. Parts 91, 119, 121, 125, and 135).

The FAA's premise for banning chemical oxygen generators on all passenger flights applies equally to every all-cargo flight. This premise is that one probable cause of the ValuJet Airlines Flight 592 fire was the "actuation of one or more of the

chemical oxygen generators being improperly carried as *cargo." Id.; see In-Flight Fire and Impact With Terrain: ValuJet Airlines Flight* 592, National Transportation Safety Board (Aug. 19, 1997). The FAA notes that "it appears that some people might have believed that the chemical oxygen generators [shipped on ValuJet Flight 592] had been previously discharged, when in fact they had not. . . . [H]uman errors in assessing whether such devices have been discharged can result in catastrophes." *Prohibition,* 63 Fed. Reg. at 45915. These human errors can affect the safety of all-cargo flights to the same if not greater extent as passenger flights because of the types and quantity of hazardous cargo permitted to be carried on all-cargo flights. As FAA indicates, FAA and the NTSB have investigated as many as 20 other incidents involving undeclared, improperly packaged, or mishandled oxygen generators. *Id.* at 459 12.

While none of the classes of cargo compartments in transport category aircraft are "designed to control tires fueled by chemical oxygen generators," *id* at 45913, this is especially true for those on all-cargo aircraft. The Class E cargo compartments that are permitted on all-cargo aircraft are not required to have liners that are as fire resistant as those in Class B, C, or D compartments on passenger aircraft. *Airworthiness Standards; Fire Protection Requirements for Cargo or Baggage Compartments,* 51 Fed. Reg. 18236, 18237 (1986) (amendment to 14 C.F.R. Part 25) (Class E compartments "do not depend on the integrity of the liner . . . to limit the supply of oxygen, as in a Class D compartment."); *see also Revised Standards for Cargo or Baggage Compartments in Transport Category Airplanes,* FAA Docket No. 28937, Notice No. 97-10, 62 Fed. Reg. 32411 (June 13, 1997) (proposed amendment to 14 C.F.R. Parts 25, 121 and 135). The FAA has noted that "the cargo compartment liner is the initial fire barrier for the protection of aircraft components, structure, passenger, and crew from a fire inside the cargo compartment . . . ." National

Transportation Safely Board, *Hazardous Materials Incident Report:* In Flight Fire, McDonnell Douglas DC-9-83, N569AA, Nashville Metropolitan Airport, Nashville, Tennessee, February 3, 1988 (NTSB/HZM-88/02) at 27 (citing June 1983 FAA Technical Center report on effectiveness of Class D compartment in containing fire through oxygen starvation). In light of the fact that many all-cargo aircraft are equipped with Class E compartments, and that even Class D compartments are not designed to control tires caused by chemical oxygen generators, carriage of these devices on all-cargo flights poses an unacceptable risk for all-cargo operations. No exceptions to a total ban on all air transportation of these devices should be permitted.

**The FAA Has Failed To Justify the Proposed Exception To the Ban on Unexpired Oxygen Generators for All-Cargo Flights**

The FAA proposes a ban on the carriage aboard all-cargo flights of chemical oxygen generators that have been discharged, are expired, or are newly manufactured and not yet charged. Prohibition, 63 Fed. Reg. at 45916. IPA supports this proposed ban and believes that it would contribute to the safety of all-cargo operations. However, the FAA has not explained why unexpired generators are less dangerous than the above-listed categories of devices, and thus supposedly present an acceptable amount of risk for all-cargo carriers. See *id.*

Indeed, it would appear that unexpired oxygen generators pose the greatest risk of any of these devices since they are charged and intended for use prior to their expiration date. In fact, in the ValuJet disaster, the fire was caused not by discharged oxygen generators, but by charged devices. Banning the less dangerous expired, discharged, or uncharged oxygen generators but allowing the carriage of more dangerous unexpired generators seems backwards. This is like saying that because people are sometimes killed by guns loaded with real bullets that they think are empty or loaded with blanks, empty guns and those loaded with blanks should be banned,

but guns loaded with real bullets should be permitted – when, in fact, guns loaded with real bullets are more dangerous.

While the proposed exception may limit the potential for mislabeling charged generators as uncharged or discharged, it will not eliminate the possibility of charged and unexpired generators causing a tragic loss of life. They are simply too dangerous to be allowed onboard aircraft. The danger they pose is not eliminated by reducing the chance that they will be mislabeled as uncharged or discharged; they can still be mispackaged, mishandled, or mislabeled as something entirely different -- and even if properly labeled, they are still dangerous. Despite the packaging, segregation, and quantity restrictions that would be placed on the carriage of chemical oxygen generators on board all-cargo flights, see *id.*, the only way to eliminate the danger is to completely prohibit all chemical oxygen generators from transportation aboard all-cargo flights. Indeed, while FAA asserts that the above-proposed precautions will "reduce" the danger that unexpired oxygen generators pose, it does not claim that the precautions will eliminate that danger. See *id.*

FAA gives no reason for allowing unexpired chemical oxygen generators to be carried aboard cargo aircraft. FAA has not shown that air transportation of unexpired chemical oxygen generators is necessary at all. In the absence of any stated reason, much less justification, for allowing unexpired devices -- which pose a significant threat to safety -- to be carried aboard cargo aircraft, this practice should be banned.

**A Total Ban Would Save Lives**

The proposed exception to the ban on carriage of unexpired oxygen generators for all-cargo operations does not "strike[ ] the appropriate safety balance," as FAA suggests. *Prohibition,* 63 Fed. Reg. at 45916. IPA objects to FAA's implied premise that merely reducing the risk of activation of chemical oxygen generators achieves a

level of safety appropriate for all-cargo flights. What the FAA seems to indicate is that, because there are fewer people on board all-cargo flights than on passenger flights, it is acceptable to place these lives at risk. IPA emphatically disagrees with this premise. One level of safety in the aviation industry demands the elimination of distinctions between passenger and cargo operations based on the number of persons on board. Only a total ban on the carriage of chemical oxygen generators on board all-cargo flights will ensure that the lives of crews operating these flights are protected from the dangers of these devices.

**Protective Breathing Equipment**

IPA supports the FM's suggestion for a future rulemaking on requiring protective breathing equipment for Part 135 operations of all-cargo flights. See *Prohibition, 63* Fed. Reg. at 45916. However, such a rulemaking should not be premised on the type of hazardous materials transported, as suggested, but should require this gear on all flights by Part 135 operators. Requirements for safety equipment should be applied uniformly to all cargo operations.

**Cross-referencing of Regulations**

IPA supports the FAA's proposal for cross-referencing FAA and RSPA regulations on the transportation of chemical oxygen generators. Cross-referencing would facilitate the understanding of, and thus compliance with, all applicable FAA and RSPA regulations on the part of air carriers, their personnel, and hazardous materials shippers/offerors. The FAA should specifically cross-reference the differing definition of "chemical oxygen generatof contained in 14 C.F.R. § 25.1450 and proposed amended 14 C.F.R. § 119.3 with that contained in the RSPA regulations.

**Informing Foreign Shippers**

IPA believes that there are several ways the FAA can inform foreign shippers of the prohibition on transportation of chemical oxygen generators. The FAA can work through foreign and international aviation, transportation, and hazardous materials industry associations to educate foreign shippers. It can require that signs in the appropriate foreign language be placed at overseas locations where freight is presented for shipment on U.S. carriers. It can also include a warning about these restrictions translated into numerous foreign languages on its Internet website.

**Consistent Application in Alaska**

IPA urges the FAA to apply the prohibitions for carriage of chemical oxygen generators to intrastate transportation in Alaska in the same manner as applied to interstate and intercontinental transportation. Fires can break out and be fueled by chemical oxygen generators on intrastate Alaska flights just as they can on interstate and intercontinental flights.

**Conclusion**

The FAA should cease carving out exceptions to aviation safety for all-cargo flights. Through industry and government-sponsored conferences, the aviation community has reached a consensus to promote "One Level of Safety." The FAA should implement this concept for both passenger and cargo flights.

For the reasons set forth above, the Independent Pilots Association requests that the FAA modify the proposed rule to eliminate the exception to the ban on

carriage of certain chemical oxygen generators on board all-cargo flights, as indicated in Attachment 1 to these Comments.[1]

[1] IPA notes that there appears to be an error in the title of proposed new 14 C.F.R. § 125.335. The title, as proposed, reads "Prohibitions on the carriage of oxidizers and devices designed as or used for the generation of oxygen." IPA believes that the inclusion of the words "oxidizers and" is erroneous, because the proposed new regulation does not deal with oxidizers. IPA would support an FAA review of the dangers posed by oxidizers aboard aircraft and an analysis of whether FAA should restrict or prohibit the carriage of oxidizers.

**ATTACHMENT 1**

1. *Amend proposed new 14 CFR § 91.20 to read as follows:*

**§ 91.20 Prohibitions on the carriage of devices designed as chemical oxygen generators.**

(a) Except as provided in paragraphs (b) ~~and (c)~~ of this section, no person may carry, or act in any manner that could result in the carriage of, a device designed as a chemical oxygen generator, as defined in paragraph ~~(d)~~ (c) of this section. This section is not intended to affect a person's obligation to comply with 49 CFR 172.101 and 173.21.

~~(b) For all cargo operations, an unexpired chemical oxygen generator may be transported if it is originally prepared and offered for transportation by a RSPA Special Provision 60 approval holder (49 CFR 172.102)(c)), and in accordance with the labeling and loading requirements of the Hazardous Materials Regulations (49 CFR parts 171 through 180), provided –~~

~~(1) It is located in a Class B or E cargo compartment, or a compartment that is equipped with a fire/smoke detection system;~~

~~(2) It is separated from other cargo before flight; and~~

~~(3) The quantity carried does not exceed the quantity limits specified in the Hazardous Materials Regulations (49 CFR parts 171 through 180).~~

~~(c)~~ (b) This section does not apply to chemical oxygen generators that are installed to meet aircraft certification requirements or are carried to meet other requirements of this part for that particular flight.

~~(d)~~ (c) For purposes of this section, a "device designed as a chemical oxygen generator" includes –

(1) A device that is charged with or contains a chemical or chemicals that produce oxygen by chemical reaction, regardless of whether the expiration date for the device has passed;

(2) **A** device that has been discharged and thus has already produced oxygen by chemical reaction, regardless of whether there is residue remaining in the device; and

(3) A device that is newly manufactured but not charged with chemicals for the generation of oxygen.

2. Amend *proposed new 14 CFR § 121.540* to *read as follows*:

**§ 121.540 Prohibitions on the carriage of devices designed as chemical oxygen generators.**

(a) Except as provided in paragraphs (b) ~~and (c)~~ of this section, no person may carry, or act in any manner that could result in the carriage of, a device designed as a chemical oxygen generator, as defined in paragraph (c) of this section. This section is not intended to affect a person's obligation to comply with 49 CFR 172.101 and 173.21.

~~(b) For all cargo operations, an unexpired chemical oxygen generator may be transported if it is originally prepared and offered for transportation by a RSPA Special Provision 60 approval holder (49 CFR 172.102)(c)), and in accordance with the labeling and loading requirements of the Hazardous Materials Regulations (49 CFR parts 171 through 180), provided –~~

~~(1) It is located in a Class B or E cargo compartment, or a compartment that is equipped with a fire/smoke detection system;~~

~~(2) It is separated from other cargo before flight; and~~

~~(3) The quantity carried does not exceed the quantity limits specified in the Hazardous Materials Regulations (49 CFR parts 171 through 180).~~

~~(c)~~ (b) This section does not apply to chemical oxygen generators that are installed to meet aircraft certification requirements or are carried to meet other requirements of this part for that particular flight.

~~(d)~~ (c) For purposes of this section, a "device designed as a chemical oxygen generatof includes –

(1) A device that is charged with or contains a chemical or chemicals that produce oxygen by chemical reaction, regardless of whether the expiration date for the device has passed;

(2) A device that has been discharged and thus has already produced oxygen by chemical reaction, regardless of whether there is residue remaining in the device; and

(3) A device that is newly manufactured but not charged with chemicals for the generation of oxygen.

3. *Amend proposed new 14 CFR § 125.335 to read as follows:*

**§ 125.335 Prohibitions on the carriage of ~~oxidizers and~~ devices designed as or used for the generation of oxygen.**

(a) Except as provided in paragraphs (b) ~~and (c)~~ of this section, no person may carry, or act in any manner that could result in the carriage of, a device designed as a chemical oxygen generator as defined in paragraph (c) of this section. This section is not intended to affect a person's obligation to comply with 49 CFR 172.101 and 173.21.

~~(b) For all cargo operations, an unexpired chemical oxygen generator may be transported if it is originally prepared and offered for transportation by a RSPA Special Provision 60 approval holder (49 CFR 172.102)(c)), and in accordance with the labeling and loading requirements of the Hazardous Materials Regulations (49 CFR parts 171 through 180), provided –~~

~~(1) It is located in a Class B or E cargo compartment, or a compartment that is equipped with a fire/smoke detection system;~~

~~(2) It is separated from other cargo before flight; and~~

~~(3) The quantity carried does not exceed the quantity limits specified in the Hazardous Materials Regulations (49 CFR parts 171 through 180).~~

~~(c)~~ (b) This section does not apply to chemical oxygen generators that are installed to meet aircraft certification requirements or are carried to meet other requirements of this part for that particular flight.

~~(d)~~ (c) For purposes of this section, a "device designed as a chemical oxygen generatof includes –

(1) **A** device that is charged with or contains a chemical or chemicals that produce oxygen by chemical reaction, regardless of whether the expiration date for the device has passed;

(2) **A** device that has been discharged and thus has already produced oxygen by chemical reaction regardless of whether there is residue remaining in the device; and

(3) **A** device that is newly manufactured but not charged with chemicals for the generation of oxygen.

4. *Amend proposed new 14 CFR § 135.88 to read as follows:*

**§ 135.88 Prohibitions on the carriage of devices designed as chemical oxygen generators.**

(a) Except as provided in paragraphs (b) ~~and (c)~~ of this section, no person may carry, or act in any manner that would result in the carriage of, a device designed as a chemical oxygen generator as defined in paragraph (c) of this section. This section is not intended to affect a person's obligation to comply with 49 CFR 172.101 and 173.21.

~~(b) For all cargo operations, an unexpired chemical oxygen generator may be transported if it is originally prepared and offered for transportation by a RSPA Special Provision 60 approval holder (49 CFR 172.102)(c)), and in accordance with the labeling and loading requirements of the Hazardous Materials Regulations (49 CFR parts 171 through 180), provided –~~

~~(1) It is located in a Class B or E cargo compartment, or a compartment that is equipped with a fire/smoke detection system;~~

~~(2) It is separated from other cargo before flight; and~~

~~(3) The quantity carried does not exceed the quantity limits specified in the Hazardous Materials Regulations (49 CFR parts 171 through 180).~~

~~(c)~~ (b) This section does not apply to chemical oxygen generators that are installed to meet aircraft certification requirements or are carried to meet other requirements of this part for that particular flight.

~~(d)~~ (c) For purposes of this section, a "device designed as a chemical oxygen generator" includes –

(1) A device that is charged with or contains a chemical or chemicals that produce oxygen by chemical reaction, regardless of whether the expiration date for the device has passed;

(2) A device that has been discharged and thus has already produced oxygen by chemical reaction, regardless of whether there is residue remaining in the device; and

(3) A device that is newly manufactured but not charged with chemicals for the generation of oxygen.